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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

The situation of human rights in Nigeria

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the joint report on the situation of human rights in Nigeria prepared by Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions, and Mr. Param Cumaraswamy, Special Rapporteur on the independence of judges and lawyers, in accordance with Commission on Human Rights resolution 1996/79 of 23 April 1996 and Economic and Social Council decision 1996/284 of 24 July 1996.

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I. INTRODUCTION

1. The present report is a joint interim report submitted to the General Assembly by Mr. Bacre Waly Ndiaye, Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, and Mr. Param Cumaraswamy, Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, pursuant to Commission on Human Rights resolution 1996/79 of 23 April 1996, entitled "Situation of human rights in Nigeria".

2. The report is divided into five chapters. Chapter I gives brief background information on Nigeria. Chapter II contains the terms of reference of the two Special Rapporteurs and describes their activities in 1996 with regard to their request to visit Nigeria. Chapter III contains a description of the action undertaken by other United Nations organs in 1996 with regard to the human rights situation in Nigeria. Chapter IV describes the situation of human rights in Nigeria with special attention to violations of the right to life and interference with the independence of judges and lawyers and their impartiality. The preliminary conclusions and recommendations of the two Special Rapporteurs are set forth in chapter V.

A. Constitutional guarantees

3. Chapter IV of the 1979 Constitution of Nigeria pertains to human rights and guarantees a wide range of civil liberties. Under the successive military Governments, it has become a practice to abolish some provisions of the Constitution, in particular those related to human rights.

B. International obligations

4. Nigeria is a party to the following international instruments: International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Prevention and Punishment of the Crime of Genocide and the Slavery Convention of 1926. Nigeria has also signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and is a party to the African Charter of Human and Peoples' Rights. A resolution adopted in December 1995 at the extraordinary session of the African Commission on Human and Peoples' Rights made reference to a mission which was to be undertaken in February 1996 in order to intensify the dialogue between the Commission and the Nigerian authorities concerning the Ogoni detainees. At the time the present report was finalized, no such mission had taken place.

5. Finally, Nigeria is a member of the Commonwealth. However, its membership has been suspended for two years.

C. Historical background

6. According to a 1995 report of the United Nations Development Programme, Nigeria has a population of 102 million, composed of some 400 ethnic, religious or linguistic groupings. The four main groupings are the Hausa and the Fulani in the north, the Yoruba in the south-east and the Ibo in the south-west. In what is now known as the Federal Republic of Nigeria, there have been many ethnic conflicts and inter-ethnic tensions.

7. Nigeria has played an important role at the regional level; it was instrumental in the creation of the Economic Community of West African States and the setting up and funding of the Economic Community of West African States Monitoring Group, which was sent to Liberia in September 1990.

8. Since its independence from the United Kingdom on 1 October 1960, Nigeria has been subjected to mounting tribal and regional tensions and suffered several coup attempts. The first such attempt occurred in January 1966, when a group of majors sought to overthrow the Government in a bloody coup. In July 1966, a revenge coup took place, setting the stage for secession of the eastern region. On 30 May 1967, leaders of the Republic of Biafra declared that it was seceding from the Republic. This led to a violent civil war known as the Biafra war, resulting in massive loss of life, as well as the destruction of the infrastructure and the economy. Colonel Yakubu Gowon, the Head of State, initiated a policy of reconstruction, reconciliation and rehabilitation, promising a return to civil rule by 1976. On 29 June 1975, however, another coup took place in Nigeria, and General Murtala Mohammed seized power. He designed a transition programme to democracy, which, following his assassination on 13 February 1976, continued to be implemented by his successor, General Olesugun Obasanjo. This transition programme led to the adoption of the 1979 Constitution, under which the first democratically elected Government was established, headed by Alhaji Shehun Shagari. On 30 December 1983, the fifth military Head of State, General Muhammadu Buhari, came to power, thus bringing an end to civilian rule. General Muhammadu Buhari was himself overthrown two years later in a bloodless coup led by General Ibrahim Babangida, who promised to bring the country back to civilian rule by 1990 and to tackle the country's economic problems. This deadline, however, was subsequently postponed.

D. Elections of 1993

9. In the elections of 12 June 1993, after democratic elections had been postponed three times, Chief Moshood Abiola was widely considered to be the winner. Before the results were published, however, the elections were cancelled by General Babangida. This led to major unrest in the country. Pressure from within the armed forces and from the international community forced General Babangida to step down, and an interim national government was appointed under Chief Ernest Shonekan. That government was declared illegal by the High Court of Lagos on 10 November 1993. A few days later, General Sani Abacha seized power when Chief Shonekan "resigned". In 1994 General Abacha tightened his control of the country in an attempt to quell the mounting unrest and criticism of the army. In addition, he faced increasing opposition from the pro-democracy movement.

10. One year after the annulled elections, Chief Moshood Abiola declared himself to be the new President; General Abacha immediately ordered his imprisonment. In March 1995, approximately 30 army officers and civilians were imprisoned after the discovery of an alleged coup d'état. Among those arrested were former President Olesugun Obasanjo and his second-in-command in the 1970's, Shehu Musa Yar'Adua. Severe punishments were imposed and most remain imprisoned. In the same year, trials started before the Civil Disturbances Special Tribunal against nine Ogoni leaders for their alleged involvement in the killing of four moderate Ogoni leaders in 1994. The nine were sentenced to death and executed in November 1995; 19 other Ogoni members are still awaiting trial for the same murders. Mrs. Kudirat Abiola, wife of Moshood Abiola and principal campaigner on her husband's behalf, was killed by unknown attackers on 4 June 1996. Information received indicates that she had been harassed on several occasions by members of the security forces or other authorities with regard to her activities. The Government has announced an investigation into her assassination and has reportedly detained in an arbitrary manner a number of persons, among whom are members of the Abiola family.

II. MANDATE AND ACTIVITIES OF THE SPECIAL RAPPORTEURS

A. Terms of reference

11. Resolution 1996/79 of the Commission on Human Rights, entitled "Situation of human rights in Nigeria", was adopted without a vote on 23 April 1996. In the resolution, the Commission:

> "3. ... calls upon the Government of Nigeria to accede to the request of the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the independence of judges and lawyers to pay a joint investigative visit to Nigeria;
>
> "...
>
> "7. Requests the two thematic Special Rapporteurs who have requested a joint investigative visit to the country to submit to the Commission at its fifty-third session a joint report on their findings, ... and requests them to submit an interim report to the General Assembly; ...".

12. Resolution 1996/74 of the Commission on Human Rights, also adopted on 23 April 1996, requests the Special Rapporteur on extrajudicial, summary or arbitrary executions "to continue to examine situations of extrajudicial, summary or arbitrary executions". Resolution 1994/41 requests the Special Rapporteur on the independence of judges and lawyers, inter alia, to inquire into any substantial allegations regarding attacks against the independence of judges and lawyers transmitted to him and to report his conclusions thereon.

13. On the basis of their respective mandates, the two Special Rapporteurs have made several efforts to obtain an invitation from the Government of Nigeria enabling them to undertake a joint fact-finding mission to the country. Since October 1995, several individual and joint communications have been sent to the Government of Nigeria, through the Permanent Mission to the United Nations

Office at Geneva, and the Special Rapporteurs also met on two occasions with the Permanent Representative in Geneva in order to discuss the issue of a visit.

14. In the meantime, under their respective mandates, the two Special Rapporteurs have continued to transmit to the Government urgent appeals and allegations in accordance with the usual working methods of their mandates, on the basis of reports from different sources.

B. Communications with the Government regarding the requested mission

15. Following the execution of the nine Ogoni leaders on 2 November 1995, the two Special Rapporteurs sent communications to the Government of Nigeria on 21 and 22 November 1995 and 17 January 1996, expressing their wish to visit Nigeria.

16. On 18 January 1996, the Special Rapporteur on the independence of judges and lawyers met with the Permanent Representative in Geneva to discuss the request to undertake a joint fact-finding mission to Nigeria. The Permanent Representative said that the Government would provide a reply to the request in due course.

17. The two Special Rapporteurs sent a joint letter to the Government of Nigeria on 30 April 1996, inquiring whether a mission to Nigeria could be undertaken from 7 to 20 July 1996.

18. On 7 May 1996, the Government of Nigeria acknowledged receipt of the letter of 30 April 1996, and stated that a decision of the capital would be communicated to the Special Rapporteurs as soon as possible.

19. On 1 June 1996, the two Special Rapporteurs, at their request, met again with the Permanent Representative of the Republic of Nigeria to further discuss with him their request to be invited to Nigeria to carry out an *in situ* fact-finding mission pursuant to resolution 1996/79 of the Commission on Human Rights. During this meeting, the Permanent Representative explained that in view of the ongoing consultations between the Secretary-General and the President of Nigeria it would not be appropriate to receive the joint mission in July, as had been suggested previously. The Permanent Representative suggested that later in 1996 might be a more suitable time to carry out a mission. The two Special Rapporteurs requested the Permanent Representative to provide a written statement on the reasons for such a postponement. No such written statement was received.

20. On 18 June 1996, following their meeting with the Permanent Representative in Geneva, the Special Rapporteurs sent a letter proposing new dates for the mission, as had been requested by the Permanent Representative. They suggested that the mission should take place from 9 to 17 October 1996. On 21 June 1996, the Government acknowledged receipt of the letter of 18 June and informed the Special Rapporteurs that the matter was being actively studied in the capital.

21. The Special Rapporteurs sent another joint letter on 30 July 1996, reminding the Government of the proposed dates for the visit. On 2 September 1996, the Government of Nigeria acknowledged receipt of the letter of 30 July 1996, reassuring the Special Rapporteurs that the Government had been informed of the request and that a decision would be conveyed to them as soon as possible.

22. On 6 September 1996, the Special Rapporteur on the independence of judges and lawyers sent a letter to the Government of Nigeria, also on behalf of the Special Rapporteur on extrajudicial, summary or arbitrary executions, referring to previous communications regarding the requests to be invited to carry out a mission. In this letter, the two Special Rapporteurs reminded the Government that the Commission on Human Rights had requested them to submit an interim report to the General Assembly. They informed the Government that if they did not receive a reply by 23 September to their request to have the mission take place from 9 to 17 October, they would be compelled to prepare the interim report solely on the basis of information that had been received from non-governmental sources, as well as other thematic mechanisms, and would have no alternative but to report to the General Assembly that the Government of Nigeria, despite all its promises, had failed to cooperate with the Commission on Human Rights.

23. The Government replied on 4 October 1996, stating that it would be willing to receive the two Special Rapporteurs in the last week of November 1996 or the second week of December 1996. In this letter the Permanent Representative reiterated the commitment of the Government to accede to the Special Rapporteurs' request to undertake the joint mission. He also pointed out that, since March 1996, Nigeria had been seized with the management of a number of successive missions of the United Nations and the African Commission on Human Rights, as well as the Commonwealth Ministerial Action Group. It had therefore become difficult to accede to the Special Rapporteurs' request to undertake the mission in the specified time-frame, in spite of the best efforts of the Government of Nigeria.

24. On 7 October 1996, the Special Rapporteurs accepted the invitation to undertake the mission during the last week of November and recommended that it should take place from 25 November to 5 December 1996. They also included in the letter the terms of reference for fact-finding missions by Special Rapporteurs/representatives of the Commission on Human Rights.

25. The Permanent Representative acknowledged receipt of the letter on 7 October 1996 and stated that he would inform the Government upon receipt of the precise details of the mission.

C. Consultations with non-governmental organizations

26. On 29 July 1996, Mr. Param Cumaraswamy, Special Rapporteur on the independence of judges and lawyers, consulted with non-governmental organizations in London with regard to the situation of the independence of judges and lawyers in Nigeria, in particular, and the situation of human rights

in Nigeria, in general. Mr. Bacre Waly Ndiaye met with a similar group of non-governmental representatives in London on 30 August 1996.

27. During the meeting between representatives of non-governmental organizations and the Special Rapporteur on the independence of judges and lawyers, concern was expressed over the appointment, promotion and suspension or dismissal of judges in Nigeria. It was brought to the Special Rapporteur's attention that the National Bar Association no longer exists. Further, although some bar organizations are operating at state level, their activities seem to be seriously marginalized. The members of the delegation also expressed their concern about the lack of due process received by criminal defendants before Nigerian courts. Although they supported the recommendation of the fact-finding mission of the Secretary-General to abolish the ad hoc tribunals, they feared that the ordinary courts would also not be able to guarantee fair trials, because judges were reportedly uneasy about hearing sensitive cases for fear of reprisals.

28. On 30 August 1996, the Special Rapporteur on extrajudicial, summary or arbitrary executions met in London with representatives of several non-governmental organizations to discuss the situation of human rights in Nigeria, and in particular violations of the right to life, and to obtain information relevant to the proposed mission. During the meetings with representatives of non-governmental organizations, he received information concerning ill-treatment, torture, arbitrary arrests, extrajudicial executions and impunity. He was also informed about the numerous problems encountered by persons who had wanted to contact the members of the fact-finding mission of the Secretary-General during or after their visit to Nigeria. Many were said to have been harassed, beaten or detained.

III. ACTION OF OTHER UNITED NATIONS ORGANS

A. Good offices missions of the Secretary-General

29. Pursuant to General Assembly resolution 50/199 of 22 December 1995, the Secretary-General sent a good offices fact-finding mission to Nigeria, composed of Mr. Atsu-Koffi Amega, Mr. V. S. Malimath and Mr. John P. Pace. The report of that mission, as well as the comments on the report by the Special Adviser to the Head of State of Nigeria, are contained in document A/50/960 and Corr.1. In the report, a number of recommendations were made arising from the trial of Ken Saro-Wiwa and others, the situation of the Ogoni people and the transition to democracy.

30. In a letter dated 21 May 1996 (A/50/960, annex II), the Special Adviser to the Head of State of Nigeria addressed an interim response to the Secretary-General, indicating the implementation of a limited number of the recommendations made by the fact-finding mission.

31. The Special Adviser stated in his letter that the Government had announced the amendment of the Civil Disturbances Act, by which members of the armed forces are excluded from serving on the tribunal. Further, the verdict and sentence of a special tribunal would be subject to judicial review at the

appellate level before confirmation by the confirming authority. With regard to the situation of the Ogoni, the Government had indicated that the Oil and Mineral Producing Areas Development Commission would be directed to look into whether there were peculiar ecological and environmental problems in the Ogoni area, with a view to ameliorating them. In addition, the Government would join the concerted efforts undertaken by the Administrator of Rivers State in order to reconcile all parties in the Ogoni area. With regard to persons being detained without trial under Decree No. 2 of 1984, the Head of State would direct the immediate review of all cases, and the decree would be amended to allow for the periodic review of each case by a body comprising the Chief of General Staff, the Inspector General of Police and the Attorney-General of the Federation at an interval of three months. Finally, Decree No. 14 of 1994, which ousted the jurisdiction of courts to issue a writ of habeas corpus to persons detained under Decree No. 2 of 1984, would be repealed. The Special Adviser stated that other aspects of the report were under consideration by the Government and any decisions would be communicated to the Secretary-General.

32. On 6 August 1996, the spokesman for the Secretary-General announced that Mr. Lansana Kouyaté, Assistant Secretary-General for Political Affairs, would go to Nigeria to follow up on the fact-finding mission of the Secretary-General and a mission that had been undertaken by the Secretary-General's Special Envoy, Mr. Lakhdar Brahimi. No report on that follow-up mission was issued.

B. Human Rights Committee

33. At its fifty-sixth session, held in New York from 18 March to 4 April 1996, the Human Rights Committee examined the first periodic report of the Government of Nigeria under article 40 of the International Covenant on Civil and Political Rights 1/ and adopted preliminary conclusions containing some urgent recommendations. The Committee made an additional set of recommendations upon continued examination of the report at its fifty-seventh session, held at Geneva from 8 to 26 July 1996, and adopted its concluding observations.

34. The relevant recommendations of the Human Rights Committee are contained in chapter IV of the present report.

IV. THE SITUATION OF HUMAN RIGHTS IN NIGERIA

A. Extrajudicial, summary or arbitrary executions

35. The Special Rapporteur on extrajudicial, summary or arbitrary executions reported to the fifty-second session of the Commission on Human Rights that throughout 1995 he had continued to receive reports about violations of the right to life (E/CN.4/1996/4). He reported about numerous allegations, the majority of which concerned death sentences imposed after trials by military courts, allegedly falling short of international standards. The Special Rapporteur informed the Commission that he had received allegations concerning secret trials, allegedly held before the Special Military Court in Lagos, of a group of more than 30 military officials and civilians accused of being involved in an attempted coup d'état which was discovered in March 1995. The Special

Rapporteur also reported about many disturbing allegations he had received concerning the trials held in 1995 before the Civil Disturbances Special Tribunal of nine Ogoni leaders who had been sentenced to death, and whose sentences were carried out shortly after the confirmation of the sentences by the Provisional Ruling Council (see also paras. 67-76).

36. The Special Rapporteur informed the Commission that he had sent four urgent appeals to the Government of Nigeria in 1995, as well as two joint appeals with the Special Rapporteur on the independence of judges and lawyers, the latter two concerning the trials of the nine Ogoni leaders. In addition, in 1995 he reported 14 cases containing allegations of extrajudicial, summary or arbitrary executions of over 200 persons. The majority of the allegations related to killings by security forces, and a considerable number of cases concerned abuse of power in response to peaceful pro-democracy demonstrations. The Special Rapporteur expressed deep concern about the trials of civilians by special or military courts, which are reportedly subject to Government interference. He stated that he was deeply disturbed by persistent allegations about the unfairness of trials such as that of Ken Saro-Wiwa and the eight other Ogoni leaders, which led to their execution, and he deplored the complete lack of the right of appeal of persons receiving the death sentence after such trials. He called upon the Nigerian Government to ensure that proceedings before the special and military tribunals conformed to standards for fair trial procedures as contained in pertinent international instruments.

37. During 1996, the Special Rapporteur on extrajudicial, summary or arbitrary executions continued to receive numerous allegations concerning violations of the right to life in Nigeria.

38. On 6 May 1996, the Special Rapporteur sent an urgent appeal to the Government of Nigeria drawing the attention of the Government to information indicating that Innocent Chukwuma, coordinator of international lobby projects of the Civil Liberties Organization, a human rights organization based in Lagos, had reportedly been subjected to harassment and intimidation by members of the Nigerian delegation during the fifty-second session of the Commission on Human Rights which took place at Geneva from 18 March to 26 April 1996. The Special Rapporteur requested the Government to investigate the allegations and to inform him about steps taken to ensure effective protection of the right to life and physical integrity of Innocent Chukwuma. At the time the present report was finalized, no reply from the Government had been received to that urgent appeal.

39. On 4 June 1996, the Special Rapporteur sent to the Government of Nigeria a number of allegations of violations of the right to life. He stated that he had received reports indicating that on 4 January 1996, Nigerian soldiers had intervened in non-violent demonstrations held by members of the Ogoni minority commemorating the International Day of the World's Indigenous People. According to the reports received, three minors were allegedly killed, a large number of people were reportedly injured and many others were allegedly arrested, including the parents of Ken Saro-Wiwa. The reports also alleged that those detained were held in secret detention centres where they might be subjected to torture or ill-treatment. The Special Rapporteur also drew the Government's attention to allegations he had received concerning a large number of Ogoni who had been detained after the fact-finding mission of the Secretary-General.

Their arrest and detention was said to be related to their cooperation with the mission. Further, the Special Rapporteur informed the Government that he had received reports about the abuse of force by law enforcement officials on several occasions. Moreover, reports indicated that the death penalty continued to be carried out after trials falling short of international fair trial standards. In addition, the Special Rapporteur stated that he had received reports of massive public executions.

40. The following allegations concerning individual cases were sent to the Government by the Special Rapporteur on 4 June 1996: (1) Prince N. A. Ayamolowo, who had reportedly been shot by the police force at a checkpoint on 29 April 1994; (2) three minors who had allegedly died during the demonstrations of 4 January 1996 referred to above: Gbarabe N. Lucky, 12 years of age, who reportedly died as a result of head injuries caused by indiscriminate shooting by the army; Kpannem Nicodimus, 13 years of age, who reportedly had been shot by members of the armed forces and died of his wounds on 6 January 1996; and Barisi Deemus, 14 years of age, who reportedly was shot by members of the armed forces; (3) seven persons reportedly killed by the police on 15 February 1994: Ebimoye Kebo, Douyi Kebo, Goddy Kebo, Mathias Omotayo, Flint Ororgun, Ezekiel Fakura and Akpos Daniah Ekiyo; (4) Lawald Moshood and Saleh Mohammed and 41 unidentified persons, who reportedly had been convicted by armed robbery and firearms tribunals and executed on 22 July 1995 in Lagos, after trials falling short of international guarantees for a fair trial; it was alleged that they had not had the right to appeal their sentences to a higher court; (5) Taiwo Akinola, member of the State Security Service, who reportedly had been shot by a corporal of the barracks police station in Ojuelegba on 2 February 1994; (6) Isyaku Ibrahim, who reportedly had been shot and killed by a policeman on 30 June 1994; (7) Mufutau Lasisi, who had reportedly been killed by a police officer on 2 December 1994; and (8) Felicia Attah, who reportedly died on 3 December 1994 as a result of gunshot wounds sustained in an encounter with a policeman. At the time the present report was finalized, no reply had been received from the Government of Nigeria.

Conclusions and recommendations of the Human Rights Committee

41. The Human rights Committee recommended, inter alia, that:

(a) the State party consider the abolition of the death penalty; that until its abolition, the State party must ensure that the application of the death penalty be strictly limited to the most serious crimes, as required by article 6 (2), of the International Covenant on Civil and Political Rights, and that the number of crimes for which the death penalty is imposed be reduced to the minimum;

(b) the Nigerian authorities take effective measures to prevent arbitrary, extrajudicial and summary executions, as well as torture, ill-treatment, and arbitrary arrest and detention by members of the security forces, and to investigate any such cases in order to bring before the courts those suspected of having committed or participated in such crimes, to punish them if found guilty and to provide compensation to victims or to their families.

Conclusions and recommendations of the fact-finding mission of the Secretary-General

42. The fact-finding mission of the Secretary-General recommended, inter alia, that in the case of the trials of Ken Saro-Wiwa and others, the Government of Nigeria should consider establishing a panel of eminent jurists, nominated by the Chief Justice of Nigeria, to establish the modalities to determine who and to what extent financial relief could be accorded to the dependants of the families of those executed.

B. Torture and other cruel, inhuman or degrading treatment

43. In 1996 many reports were received regarding the continued use of torture and ill-treatment in Nigeria. The Special Rapporteur on the question of torture intervened on several occasions.

44. On 6 May 1996, the Special Rapporteur on the question of torture, Mr. Nigel Rodley, transmitted a number of cases to the Government of Nigeria regarding the use of torture and other forms of ill-treatment. Referring to State Security Decree No. 2 of 1984, the Special Rapporteur pointed to the fact that detainees may be held indefinitely, incommunicado and without opportunity to challenge the legality of their detention. In practice, this reportedly leads to situations in which detainees are held incommunicado in overcrowded and unsanitary cells, with inadequate food and washing facilities and without exercise or exposure to fresh air. The Special Rapporteur transmitted to the Government allegations related to the case of George Mbah, a journalist, reportedly suffering from neurological problems, who had lost consciousness as the result of ill-treatment to which he was allegedly subjected following his arrest in May 1995. The Special Rapporteur also drew the attention of the Government to allegations he had received with regard to the treatment of several members of the Ogoni community who had been detained since 1994: Baribor Bera, who was reportedly stripped naked, tied to a pillar, flogged with a horsewhip and forced to swallow his teeth that had been knocked out as a result of the beatings; Clement Tusima, who had reportedly died in prison in August 1995 as a result of medical neglect while in detention; Benjamin Bere, who, with a number of other detainees, had reportedly been detained at a military camp in Bori where they were allegedly beaten each day with a cane and given food only every three days. Mr. Bere had reportedly been released and had been hospitalized for his injuries.

45. The Special Rapporteur also transmitted to the Government allegations concerning the case of Adoba Bamiyi, who had allegedly been subjected to torture at the Ajeromi police station in Apapa in Lagos State to extract a confession from him, which reportedly resulted in a written declaration in which he made a confession. After this, he was reportedly again subjected to torture upon transfer to the anti-robbery squad headquarters at Ikeja.

46. On 17 June 1996, the Special Rapporteur transmitted to the Government of Nigeria an urgent appeal for Nnimmo Bassey, chairman of two non-governmental organizations, Environmental Rights Action and Southern Zone of the Civil Liberties Organization. According to information received, he had been arrested

on 5 June 1996 as he was leaving Nigeria to attend an environmental conference in Ghana. The source reported that he had been held at the Lagos headquarters of the State Security Service and then transferred to the Federal Investigations and Intelligence Bureau headquarters in Lagos. Fears had been expressed that he might be subjected to torture or other ill-treatment while in detention.

47. At the time the present report was finalized, no reply had been received from the Government to any of the urgent appeals of the Special Rapporteur on the question of torture.

Conclusions and recommendations of the Human Rights Committee

48. The Human Rights Committee recommended, inter alia, that the Nigerian authorities take effective measures to prevent torture, ill-treatment and arbitrary arrest and detention by members of the security forces and to investigate any such cases in order to bring before the courts those suspected of having committed or participated in such crimes, to punish them if found guilty and to provide compensation to victims or their families.

C. Arbitrary detention

49. The Working Group on Arbitrary Detention intervened in many cases of reported arbitrary detention throughout 1996 and took several decisions about the arbitrary character of specific cases.

50. On 7 February 1996, a joint urgent appeal was sent by the Chairman of the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers, on behalf of Gani Fawehinmi, a human rights lawyer, who had reportedly been arrested at his house in Lagos on 30 January 1996 by officers of the State Security Service. It was alleged that no charges had been brought against him and that he was being held incommunicado at the headquarters of the State Security Service in Shangisha, near Lagos. His detention was said to be related to his criticism of the Government and his activities as a human rights lawyer, including legal challenges to the constitutionality of the Civil Disturbances Special Tribunal, which was due to try 19 Ogoni prisoners on charges of murder in connection with the May 1994 killings of four Ogoni leaders, and to the constitutionality of the continuing detention or trial of Nosa Igiebor, Editor-in-Chief of Tell Magazine. Gani Fawehinmi had reportedly also challenged the constitutionality of the trials and subsequent executions of Ken Saro-Wiwa and eight Ogoni prisoners in November 1995.

51. On 20 February 1996, the chairman of the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers transmitted a joint urgent appeal to the Government concerning the arrest and incommunicado detention, since 14 February 1996, of Femi Falana, human rights activist and president of the National Association of Democratic Lawyers. It was alleged that his detention might be due to his involvement in legal challenges against the Government of Nigeria.

52. On 18 April 1996, the Chairman of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture transmitted a joint urgent appeal to the Government of Nigeria concerning 18 supporters of the Movement for the Survival of the Ogoni People who had reportedly been detained in Ogoniland and Port Harcourt since late March 1996, allegedly for the purpose of preventing them from meeting with the United Nations mission that visited the region on 9 and 10 April 1996. They were identified as follows: Tulee Gokana, Tonny Goddy, Kpoobari Deeker, Yaayaa Sigalo, Bariaalo Kpoora, Barida Biee, Sunday Torbel, Joseph Deekor, Hawkin Poronen, Adolphus Gbarabe, Barinem Zighakol, Josephine Zighakol, Temhbari Mene Gbigha, John Baaba, Chief Sunday Legbara, Mrs. Mercy Legbara and Bariture Legbara. Some of the persons mentioned were said to be detained at a military camp in Afram. In the same urgent appeal, the Government's attention was drawn to the situation of Anyakwee Nsirimovu, the Executive Director of the Institute of Human Rights and Humanitarian Law, who had reportedly been arrested by the security forces on 27 March 1996, following a raid on the Institute's headquarters in Port Harcourt. The security forces were said to be looking for documents, including a report on the trial of Ken Saro-Wiwa, executed president of the Movement for the Survival of the Ogoni People. Anyakwee was reportedly held without charge at an unknown location. The Chairman of the Working Group and the Special Rapporteur on the question of torture requested from the Government any information it could provide about the situation of the above-mentioned persons, including their trial or release and the legal basis for their detention, and asked if it could assure the humane treatment of all the detained persons.

53. On 23 May 1996, the Working Group on Arbitrary Detention adopted a decision concerning the arbitrary character of the detention of General Olesugun Obasanjo, former Head of State of Nigeria, and 19 other persons. The following persons were reportedly given life sentences by a military tribunal after proceedings which fell short of international guarantees for a fair trial and did not allow the right to appeal: Captain U. S. Suleiman; Captain A. A. Ogunsunyi; Captain M. A. Ibrahim; Lieutenant-Colonel Peter Ojaola; Second Lieutenant Richard Emonvhe; State Security Officer Julius Abajo; Kunle Ajibade, journalist of The News magazine; C. P. Izuorgu; Alhaji Sanusi Mato; and Felix Ndamaigida. The following persons had reportedly been tried by the same tribunal and sentenced to prison terms ranging from two to 25 years: Colonel D. Usman; Staff Sergeant Patrick Usikpeko; Shehu Sani, vice-chairman of Campaign for Democracy; Christine Anyanwu, editor-in-chief of The Sunday magazine; Ben Charles Obi, editor of the magazine Classique; and Queenett Allogoa, female companion of Colonel Gwadabe. The following three persons had also been convicted, but their sentences were not known to the source: Lieutenant-Colonel I. Shaibu, Colonel Emanuel Ndubueze and Akinloye Akinyemi. Another 40 unidentified defendants were also said to be detained who had been convicted reportedly on charges ranging from treason to the publishing of articles deemed critical of the Government.

54. The Working Group's communication of 23 May 1996 also referred to the cases of Beko Kuti, chairman of the Campaign for Democracy; Tunji Abayomi, chairman of Human Rights Africa, and Chima Ubani, head of the Civil Liberties Organization's human rights programme, who had reportedly been arrested without warrants and were being held incommunicado. The Working Group decided that in view of the fact that none of the allegations had been refuted by the Government, the

detention of all persons mentioned above was declared to be arbitrary. The Government of Nigeria was requested to remedy the situation.

55. On 11 June 1996, the Chairman of the Working Group on Arbitrary Detention transmitted to the Government of Nigeria the Working Group's decision on a number of cases of alleged arbitrary detention. The Working Group informed the Government that on 22 May 1996 it had decided that the detentions of Karanwi Meschack, Mitee Batom and Loolo Lekue were to be declared arbitrary, being in contravention of articles 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights, 2/ and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights. 1/ The persons mentioned had reportedly been arrested on 4 August 1994 in Port Harcourt, Rivers State, following their appearance before the Commonwealth Human Rights Committee. The forces reportedly holding them at a special military camp near Port Harcourt were said to belong to the State Intelligence and Investigations Bureau. According to the source, they had never officially been charged, and their right to apply for habeas corpus had been abrogated by Decree No. 14 of 1994. The Working Group requested the Government of Nigeria to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

56. On 13 August 1996, the Chairman of the Working Group on Arbitrary Detention sent an urgent appeal to the Government of Nigeria concerning the alleged arbitrary detention of the following 20 persons: Sampson Ntignee, Nyieda Nasikpo, Benjamin Kabare, Friday Gburuma, Chief Popgbara Zorzor, Samuel Asiga, John Banaty, Barritule Lebe, Adam Kaa, Kagbara Bassee, Blessing Israel, Babina Deekor, Godwin Gboelor, Alainbare Abere Papah, Babina Vizor, Taaghalobari K. Monsi, Nabaa Baoui, Babiina Kumanwee, Michael Dogala and Sunday Nyorben. According to the information received, the 20 persons mentioned were among 150 who had been arrested in June 1994 in relation to the killing of four Ogoni leaders. They had reportedly been incarcerated since 1994 and had been brought before a magistrate for the first time on 17 July 1996; the hearings on their holding charges were reported to have been postponed until 3 September and 3 October 1996. In his appeal, the Chairman of the Working Group called upon the Nigerian Government in a humanitarian spirit to allow the detainees access to medical care and to do its utmost to guarantee their right to physical and mental integrity.

57. At the time the present report was finalized, no substantive reply had been received from the Government to the decisions or urgent appeals of the Working Group on Arbitrary Detention.

Conclusions and recommendations of the Human Rights Committee

58. The Human Rights Committee recommended, inter alia, that:

(a) the Nigerian authorities take effective measures to prevent arbitrary arrest and detention by members of the security forces and to investigate any such cases in order to bring before the courts those suspected of having committed or participated in such crimes, to punish them if found guilty and to provide compensation to victims or to their families;

(b) steps be taken to release all persons who have been detained arbitrarily or without charge and to reduce the period of pre-trial detention; the practice of incommunicado detention should cease; and compensation should be provided in the cases indicated by article 9 (5) of the Covenant on Civil and Political Rights;

(c) all necessary measures be taken to ensure that the conditions of detention of persons deprived of their liberty fully meet article 10 of the Covenant and the Standard Minimum Rules for the Treatment of Prisoners. 3/ The overcrowding of prisons should be reduced by overcoming delays in the trial process, by considering alternative forms of punishment or by expanding the number of prison places.

Conclusions and recommendations of the fact-finding mission of the Secretary-General

59. The conclusions and recommendations of the fact-finding mission of the Secretary-General are given in paragraph 90 below.

D. Independence and impartiality of judges and lawyers

60. According to numerous reports from different sources, the Government continues to interfere with the independence of the judiciary. The judicial system in Nigeria is a dual system, with both ordinary courts at the state and Federal level and special tribunals created by the military. The military tribunals, established in Nigeria since 1984, are, at the state level, the armed robbery and firearms tribunals, whose decisions are submitted to the military administrator for confirmation; at the Federal level there is no appeal to a higher court from a military tribunal but only to a special appeal tribunal, where decision is subject to confirmation by the Provisional Ruling Council.

61. Pursuant to Decree No. 12 of 1994, the supervisory jurisdiction of the ordinary courts over actions of the government done or taken under a decree or edict has been virtually ousted. Section 2 (b) (1) of Decree No. 12 reads as follows: "No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any decree or edict, and if such proceedings are instituted before or after the commencement of this decree the proceedings shall abate, be discharged and made void." It has been learned that most ordinary courts cite this ouster clause as an excuse to decline jurisdiction in cases involving violations of human rights by military authorities. Decree No. 12 of 1994 appears to amount to a usurpation of the judicial power of ordinary courts.

62. A number of new military tribunals were established in 1995, with authority to oust the supervisory jurisdiction and judicial review of the high courts with no appeal from decisions of the tribunals. Up to the present time there have been no fewer than 14 decrees creating military tribunals, and 41 decrees have been issued ousting the jurisdiction of the ordinary courts. Most of the trials before these courts are reportedly held in secret, and the rules of due process, as well as the right to presumption of innocence, are routinely ignored.

Examples of such trials are those that took place in 1995 against alleged coup plotters.

63. It has been reported that the working conditions of judges are very poor and that the court system in Nigeria is seriously short of funds. According to the sources, the number of courtrooms is insufficient and are generally in bad condition - overcrowded, badly equipped and poorly ventilated. The salaries of judges, magistrates and other court officers, including prosecutors and the police, who often act as prosecutors, are reported to be extremely low. Judges are sometimes forced to bring their own paper and pens to record their judgements in long hand. The cost of legal defence is also reported to be very high, and proceedings of both criminal and civil cases tend to last a very long time. As a result of the financial crisis in the judiciary, bribery is reported to be a common trend among the judiciary.

64. Moreover, the Government is reportedly disregarding court orders on a regular basis. As an example, in June 1996 a court of appeal ordered that the wife and doctor of Gani Fawehinmi, a human rights lawyer and pro-democracy activist who reportedly has been detained since January 1996, should be allowed to see him in the Bauchi prison where he is being held. The source reports that when his wife and doctor went to the prison following the court's order they were denied access.

1. Appointment and dismissal of judges

65. According to information received, the executive arm of the Government in Nigeria has been primarily responsible for the appointment of judges; the Constitution of 1979 provided for the appointment of Federal judges by the President on the advice of a federal judicial service commission, which is reportedly composed of members appointed by the President.

66. After the military coup in 1983, the Constitution (Suspension and Modification) Decree No. 1 of 1984 empowered the Provisional Ruling Council to appoint judges to both the state and the Federal courts, on the advice of an advisory judicial committee. The Provisional Ruling Council, however, is not under any obligation to follow the advice of the advisory judicial committee. Judicial appointments are thus subject to unrestrained executive power. At the state level, state governors are reported to have a certain degree of influence through state judicial committees, which are responsible for the appointments of judicial officers in magistrates' courts and customary courts (in southern Nigeria) and district and area courts (in northern Nigeria).

2. Special tribunals

67. The establishment of special tribunals is reported to have seriously undermined the functioning of the regular court system in Nigeria. Tribunals have been created to try politically sensitive cases and purportedly to bypass the delays of the court system that occur in the trial of high-profile crimes. Examples of special tribunals include the robbery and firearms (special provisions) tribunals, the civil disturbances special tribunals and the treason

and other offences special military tribunals. In comparison to the normal courts, these special tribunals have far better resources and their staff is better paid, resulting in further diminution of the pool of competent judges and legal staff available to the ordinary courts.

68. The salient features of all these tribunals are the same. They are all established on an ad hoc basis; the members of the tribunals are appointed by the Federal Military Government; the jurisdiction of the ordinary courts is ousted; there is no right of appeal to a higher tribunal; and the tribunals do not respect international standards on the right to a fair trial. These features of the special tribunals are highlighted in the cases of the Ogoni Nine and the coup plotters.

(a) Civil Disturbances Special Tribunal

69. The Government may establish a civil disturbances special tribunal pursuant to Decree No. 2 of 1987. Under part I, section 1, the Decree envisages the constitution of a civil disturbances investigation committee whenever the President, Commander-in-Chief of the Armed Forces, forms the opinion that any one of the following four conditions exist:

(a) Civil disturbances, commotions or unrest have occurred in any part of the Federal Republic of Nigeria;

(b) There has been a breach of the peace that would have the effect of destabilizing the peace and tranquillity of the nation;

(c) The public order and public safety of Nigeria is being threatened by any disturbance;

(d) A riot or civil disturbances of a riotous nature have occurred or are likely to occur, resulting or likely to result, as the case may be, in loss of life and property and injury to persons.

70. The Decree requires the investigation committee to conduct an important investigation into the civil disturbances and to make recommendations for the trial of any person or persons involved in them. The committee thus constituted shall consist of such persons as the President may appoint and may, subject to any general or specific directions that may be given by the President, regulate its own proceedings as it sees fit.

71. Part II, section 3, of the Decree provides that the special tribunal shall try the offences specified in the first schedule of the Decree; the jurisdiction of the regular criminal courts is ousted. With regard to this section of the Decree, the report of the fact-finding mission of the Secretary-General concluded that conditions for the constitution of a special tribunal must be found to exist before its constitution. Specifically, the report states that "the expression 'may constitute a special investigation committee' used in section 1 of the Act has ... to be construed as being mandatory in character and the word 'may', in the context, means 'shall'".

72. Part III, section 7, of the Act provides for the "confirmation" of the sentence, as follows:

> "7. (1) Where a tribunal finds the accused guilty of any offence referred to in this Act, the record of the proceedings of the tribunal shall be transmitted to the confirming authority for the confirmation of the sentence imposed by the tribunal; ...
>
> "(4) For the purposes of this Act, the confirming authority shall be the Armed Forces Ruling Council."

73. Part III, section 8, of the Act ousts the jurisdiction of the court of law to inquire into the validity of any decision, sentence, judgement, confirmation, direction or notice given or made under the Act. These provisions effectively deny the right of appeal to a defendant appearing before a civil disturbances special tribunal, in violation of international standards set forth in the International Covenant on Civil and Political Rights and in Basic Principles on the Independence of the Judiciary.

74. The legal flaws of the Civil Disturbances Special Tribunal are highlighted by the case of the Ogoni Nine. Following the murder of four Ogoni leaders that occurred in the riots of 21 May 1994 during an election campaign in Gauche, Gokana, 15 people were charged eight months later with the crime of murder. An ad hoc tribunal was appointed by the Federal Military Government to try the offenders arising out of that riot. The establishment of such a tribunal is inconsistent with principle 5 of Basic Principles on the Independence of the Judiciary, which provides, inter alia, that: "Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures." 3/ Further, this tribunal was composed of two judges (Justice Ibrahim Nadhi Auta, judge of the Federal High Court, in Lagos, and Justice Etowa Enyong Arikpo, judge in the Cross River State High Court) and Lieutenant-Colonel Hammid Ibrahim Ali, an army officer, who allegedly had been handpicked by the executive.

75. A constitutional challenge to the jurisdiction of the tribunal, filed before the ordinary courts, has still not been heard.

76. The fact that the judges were appointed by the Executive calls seriously into question the independence and impartiality of the tribunal and is inconsistent with principle 14 of Basic Principles on the Independence of the Judiciary, which provides that: "The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration." 3/ The report of the mission of the Secretary-General reached a similar conclusion, finding that the presence of a military officer on the tribunal is contrary to the standard of impartiality and independence set out in article 7 (1) (d) and article 26 of the African Charter of Human and Peoples' Rights and article 14 (1) of the International Covenant on Civil and Political Rights.

77. The mission of the Secretary-General also concluded that the order constituting the tribunal was void ab initio and therefore non est. This conclusion was based on the fact that a civil disturbance committee had not been constituted, as required by part I, section 1, of Act No. 2 of 1987.

78. There were also serious allegations that there was a lack of due process during the course of the trial. These allegations were substantiated by the mission of the Secretary-General, which found that procedures followed in the trial were not fair, as illustrated by the following:

(a) There was denial of access to counsel for a long period prior to the opening of the trials. The mission noted that Ken Saro-Wiwa and others were detained on the night of the incident, 21 May 1994, without charge, and brought to trial on 6 February 1995. During this period they were held in inhuman conditions and denied access to counsel;

(b) Whereas after the opening of the proceedings, the tribunal accorded two weeks for the defence counsel to prepare the brief, access to counsel was limited by the detention of the accused in a military base;

(c) The military was involved in all phases of the trial, as a result of which serious allegations were made concerning the credibility of witnesses, freedom of access to the tribunal, and intimidation of the accused, their relatives and other members of the public;

(d) The members of the defence counsel were harassed by the military personnel, which required them to request permission to enter the courts and submitted them in the process to hardship, indignities and waste of time;

(e) Instead of furnishing the copies of the statements of witnesses as recorded by the investigation agency, only a summary of the statements was furnished to the accused;

(f) A videotape which was relied upon by the defence as an important piece of evidence was not permitted to be produced before the tribunal;

(g) Mr. Ken Saro-Wiwa had a prepared statement which he tendered to the commission to be taken into consideration as his statement. The tribunal refused to received the statement;

(h) Affidavits on behalf of the defence by some of the witnesses examined by the prosecution, stating that they had been bribed by the authorities to make their statements, were not received in evidence;

(i) The tribunal refused to stay further proceedings even though a request was made to that effect on the ground that an appeal had been preferred requesting the appellate court to stay the further proceedings before the tribunal on the ground that its members were biased against the accused.

(b) Special Military Tribunal

79. A number of decrees issued by the respective military Governments allow for the establishment of special military tribunals. The procedural flaws in these tribunals are clearly demonstrated in the so-called coup plotters' trial.

80. The Special Rapporteur on extrajudicial, summary or arbitrary executions, in his report to the Commission on Human Rights (E/CN.4/1996/4) cited

information that had been brought to his attention in 1995 concerning the secret trials held before the Special Military Court in Lagos of more than 30 military officials and civilians accused of being involved in an alleged attempted coup d'état. Subsequent reports indicated that in March 1995, several officers of the armed forces and some civilians were arrested and charged with plotting a coup against the military Government. The tribunal was specifically constituted to hear the case under the Treason and Other Offences Special Tribunal Decree No. 1 of 1986. Pursuant to that decree, the tribunal is empowered to try "any person whether or not a member of the armed forces who, in connection with any act of rebellion against the Federal Government, has committed the offence of treason, murder or any offence under Nigerian Law". The tribunal constituted to try the alleged coup plotters was composed entirely of military personnel, presided over by Brigadier General Patrick Aziza, a member of the Provisional Ruling Council.

81. The trial was conducted in June and July 1995. As in the case of the Ogoni Nine, there was a lack of due process during the course of the proceedings. Those tried were denied legal representation of their choice; instead, military lawyers were appointed to defend them. These lawyers were answerable only to the tribunal, and most of the documents needed for the defence were allegedly not available. In addition, the trial was held in secret.

82. The trial culminated in the conviction of 41 persons, and the sentences ranged from the death penalty to long prison terms. As in the case of the Ogoni Nine, there was no right of appeal to a higher tribunal; appeal against the tribunal's judgement could only be made to the Provisional Ruling Council. Fourteen of the accused, including General Shehu Yar'adua, a former deputy Head of State, and R. S. B. Bello Fadile, a lawyer, were convicted of treason and sentenced to death, although the death sentences were commuted in October 1995, after international appeals, to terms of imprisonment. Fourteen others, including Beko Ransome Kuti, chairman of the Campaign for Democracy, and journalists Chris Anyawu, George Mbah and Kunle Ajibude, were each sentenced to 25 years' imprisonment. Former Head of State General Olesugun Obasanjo and three others were given life sentences, later commuted to 15 years. According to a doctor who visited General Obasanjo on 18 June 1995, he was suffering from acute high blood pressure, malaria, diabetes and fatigue and was in need of immediate medical attention. This medical report has allegedly been ignored by officials. General Obasanjo reportedly was recently transferred from Jos to Yola Prison.

3. Customary courts and area courts

83. Reports indicate that there is serious concern with regard to proceedings before customary courts and area courts. According to the information received, judges in customary courts and area courts are not required to be legally qualified. Concern has also been expressed that those serving as judges might be closely linked to the executive authorities in the areas in which they operate.

4. Activities of the Special Rapporteur

84. On 4 December 1995, the Special Rapporteur on the independence of judges and lawyers addressed a letter to the Government of Nigeria with regard to the case of at least 17 Ogoni activists who were arrested in mid-1994 following the alleged murder of four Ogoni leaders in May 1994. According to the source, they had reportedly been detained incommunicado and without charge from mid-1994 until June 1995. It was reported that they were brought before a magistrate's court in Port Harcourt on a 'holding charge', believed to be for murder. The source further reported that four other men, whose identities were not known, were reportedly arrested on 24 October 1995 and charged with murder, also in connection with the May 1994 murders. Following the execution of the Ogoni Nine on 10 November 1995, the source expressed concerns that the 21 Ogoni activists could be unfairly tried and sentenced to death by the Civil Disturbances Special Tribunal, which it considers not to be independent and from whose decisions there is no right of appeal. It is left to the discretion of the Executive to confirm the conviction and death sentence. The Special Rapporteur stated that if the allegations are correct, the 21 Ogoni activists would be tried by a tribunal devoid of the universally accepted basic norms for independent and impartial justice. As stated in the Special Rapporteur's report to the fifty-second session of the Commission on Human Rights (E/CN.4/1996/37), no reply to this communication had been received from the Government.

85. On 8 February 1996, the Special Rapporteur sent a letter to the Government of Nigeria containing allegations regarding the detention for several hours of Olisa Agbakoba, one of the lawyers who represented human rights activist Ken Saro-Wiwa and the eight other Ogonis who were executed in November 1995. The detention of Mr. Agbakoba followed the detention of Gani Fawehinmi on whose behalf a joint urgent appeal had been sent by the Special Rapporteur and the Chairman of the Working Group on Arbitrary Detention on 7 February 1996 (see para. 50 above).

86. On 20 February 1996, the Special Rapporteur and the Working Group on Arbitrary Detention sent a joint urgent appeal concerning Femi Falana, human rights activist and president of the National Association of Democratic Lawyers (see para. 51 above).

87. On 15 August 1996, the Special Rapporteur on the independence of judges and lawyers sent a letter to the Government of Nigeria containing the following allegations:

(a) Robert Azibola and Uche Okwukwu, lawyers of 19 Ogoni activists who had been detained since July 1994, had reportedly been arrested and detained on 3 August 1996. According to the source, the two lawyers were arrested by members of the security forces at the State and Intelligence Investigations Bureau, in Port Harcourt, after assisting a photographer whose camera the security forces had attempted to confiscate after he had photographed four of the defendants. The Special Rapporteur had been informed that the lawyers were charged with 'obstructing the course of justice' and were subsequently released on bail on 4 or 5 August 1996;

(b) With regard to the trial of the 19 Ogoni activists, the Special Rapporteur drew the Government's attention to the fact that he had been informed that the defendants were first brought before a magistrate court on 19 May 1995 for a holding charge. On 17 July 1996, they were reportedly brought before two separate magistrate courts, 14 of them before Magistrate Court 2 and four or five before Magistrate Court 3, respectively, after the counsel had encountered difficulties in trying to have the defendants brought before the court. The counsel's intention to have the holding charges examined by the magistrate courts was reportedly based on the deteriorating physical condition of the detainees, resulting from harsh prison conditions and alleged torture. The Special Rapporteur also drew the Government's attention to the fact that the 19 Ogoni activists had been brought before the two magistrate courts, in spite of the fact that those courts reportedly lacked jurisdiction, since the Rivers State High Court is reported to have jurisdiction in these cases. Concern was also expressed to the Special Rapporteur about reports that although the defendants had been accused of the same crime, they would be tried in two separate trials, before separate courts. Further, the defence lawyer of the 14 Ogoni who had been brought before Magistrate Court 2 reportedly stated that he had been allowed to see only 8 of the defendants and had not been provided with any information related to the cases. Four or five other Ogoni were reportedly brought before Magistrate Court 3 on 5 August 1996. Information received indicated that the police prosecutor in the matter had been quizzed for bringing the 14 Ogoni before court on 17 July and had been ordered not to bring them before court except with prior permission from his superiors. The Special Rapporteur had, moreover, been informed that Magistrate Mrs. Kate Abiri had further adjourned the hearing of the defendants until 3 September 1996 and 3 October 1996. In this regard, the Special Rapporteur brought to the attention of the Government principles 7, 8, 16, 21 and 27 of the Basic Principles on the Role of Lawyers and guideline 4 of the Guidelines on the Role of Prosecutors.

88. In the same communication, the Special Rapporteur reminded the Government of Nigeria of allegations transmitted to the Government earlier in the year relating to the detention of Gani Fawehinmi, on whose behalf a joint communication had been sent with the Working Group on Arbitrary Detention on 7 February 1996 (see para. 50 above). The Special Rapporteur pointed out that no reply had been received concerning the allegations transmitted to the Government, on 8 February 1996, regarding the temporary detention of lawyer Olisa Agbakoba. The Special Rapporteur requested a reply to allegations concerning the case of Femi Falana for whom an urgent appeal was sent, jointly with the Working Group on Arbitrary Detention, on 20 February 1996 (see para. 51 above). The Special Rapporteur expressed his specific interest in learning about the status of the proceedings against the persons mentioned, the charges brought against them and the conditions of detention. At the time the present report was finalized, the Special Rapporteur had not received a substantive reply to his communication of 15 August 1996, nor to the previous communications.

Conclusions and recommendations of the Human Rights Committee

89. The Human Rights Committee recommended, inter alia, that:

(a) As already recommended, all decrees revoking or limiting guarantees of fundamental rights and freedoms should be abrogated; all courts must comply with all standards of fair trials and guarantees of justice prescribed by article 14 of the International Covenant on Civil and Political Rights;

(b) Urgent steps should be taken to ensure that persons facing trial are afforded all the guarantees of a fair trial, as provided for in article 14 (1), (2) and (3) of the Covenant, and to ensure their right to have their conviction and sentence reviewed by a higher tribunal, in accordance with article 14 (5) of the Covenant.

Conclusions and recommendations of the fact-finding mission of the Secretary-General

90. The fact-finding mission of the Secretary-General recommended, inter alia, that:

(a) The Government should repeal the Civil Disturbances (Special Tribunal) Act of 18 March 1987 so that offences of this type are tried by the ordinary criminal courts;

(b) Alternatively, the following amendments should be made to the Act:

(i) Section 2 (2b) of the Act, providing for appointment of a serving member of the armed forces as a member of the Special Tribunal, should be deleted;

(ii) A specific provision should be incorporated to the effect that the members of the Special Tribunal shall be appointed on the recommendation of the Chief Justice of the Supreme Court of Nigeria;

(iii) Section 7 of the Act should be amended to provide for confirmation of the order of conviction and sentence by the Nigerian Court of Appeal in place of confirmation by the Provisional Ruling Council;

(iv) Section 8 of the Act, which excludes the jurisdiction of the courts of law to review the decision of the Special Tribunal, should be deleted and the power of the superior courts to issue a writ of habeas corpus should be restored;

(v) A specific provision should be made for an appeal against the decision of the Special Tribunal to the Supreme Court of Nigeria;

(c) All trials pending and contemplated under the Civil Disturbances (Special Tribunal) Act should be suspended and further action taken only after the above-mentioned amendments are made.

E. Transition to democracy

91. The Special Rapporteur on the independence of judges and lawyers considers a constitutional Government based on the rule of law as pivotal for an

independent and impartial judiciary. He is concerned about reports he has received indicating that there are no significant signs towards democratization in Nigeria, as promised by the Government.

92. In January 1994, the Government announced that a national constitutional conference would be called to draft a new constitution and set the stage for holding elections. In December 1994, the constitutional conference recommended that the Government hand over power to an elected civilian Government by 1 January 1996. However, it reversed this decision in April 1995. The conference prepared a report and a draft constitution which was presented to General Abacha on 27 June 1995. Although General Abacha is reported to have stated that the draft constitution would be considered and approved within three months by the Provisional Ruling Council, that has not happened and the draft has not been published.

93. On 1 October 1995, on the occasion of the thirty-fifth anniversary of Nigerian independence, General Sani Abacha announced a timetable for return to civilian rule. A gradual restoration of elected government was envisaged, with election at local government and state levels, and national presidential elections would take place in 1998. The creation of a number of bodies was announced to oversee the transition process: a new national electoral commission of Nigeria; a Federal character commission, with the task of elaborating an equitable formula for sharing of Federal and state posts; a transition implementation committee; a national reconciliation committee; and a state creation and local government boundary adjustment commission. In addition, Decree No. 22 of 1995 provided for the establishment of a national human rights commission to deal with all matters relating to the protection of human rights as guaranteed by the constitution and international treaties to which Nigeria is a signatory. The National Human Rights Commission was officially inaugurated on 17 June 1996.

94. The following detailed timetable was provided for in the Transition to Civil Rule (Political Programme) Decree No. 1 of 1996, schedules one to four:

October-December 1995: Approval of the draft Constitution, lifting of the ban on political activities; establishment of the National Electoral Commission of Nigeria; creation of a transition implementation committee, a national reconciliation committee and a federal character commission; appointment of a panel for the creation of a state and local government boundary adjustment commission;

January-March 1996: Election and inauguration of local government councils on a 'non-party' basis;

April-June 1996: Creation of states and local governments; commencement of political party registration;

July-September 1996: Registration of political parties; delineation of constituencies; production of an authentic voters' register;

October-December 1996: Election of local government councils at party level; sitting of local government election tribunals and conduct of by-elections;

January-March 1997: Inauguration of party-elected local government councils; consolidation of new political party structures;

April-June 1997: Party states primaries to select candidates for the state assembly and governorship elections; screening and approval of candidates by the National Electoral Commission of Nigeria;

July-September 1997: State assembly elections: sitting of state election tribunals and conduct of by-elections;

October-December 1997: Election of state governors: sitting of state election tribunals and conduct of by-elections;

January-March 1998: Inauguration of state assemblies and swearing in of state governors; party primaries to select candidates for National Assembly elections; National Assembly election campaigns;

April-June 1998: National Assembly elections; sitting of National Assembly election tribunals and conduct of by-elections; primaries to select candidates for presidential elections; commencement of nationwide campaign for the presidential elections;

July-September 1998: Presidential elections;

1 October 1998: Swearing-in of newly elected president and final disengagement by the armed forces.

Conclusions and recommendations of the Human Rights Committee

95. The Human Rights Committee recommended, inter alia, that:

(a) Immediate steps should be taken to restore democracy and full constitutional rights in Nigeria without delay;

(b) A review of the legal framework for the protection of human rights in Nigeria should be undertaken in order to ensure that the principles of the International Covenant on Civil and Political Rights are incorporated into the legal system and that effective remedies are provided in case of violations of rights;

(c) Decree No. 107, and any other measures which abrogate the application of the basic rights enshrined in the 1979 Constitution, should be abrogated;

(d) The Government of Nigeria should ensure that the National Human Rights Commission takes steps to inform and educate the community about the rights and freedoms protected by the Covenant and the Constitution and about the remedies available in case of violation of rights; it should seek the assistance of the

technical and advisory services of the United Nations Centre for Human Rights in this process.

Conclusions and recommendations of the fact-finding mission of the Secretary-General

96. The fact-finding mission of the Secretary-General recommended, inter alia, that the Government:

(a) Strengthen the existing committees and commissions established to usher in democratic civil rule by including persons holding different shades of opinion and persons representing professional associations, political groups and ethnic minorities;

(b) Invite an international team, composed of observers from the United Nations and/or the Organization of African Unity, to be stationed in Nigeria to monitor the implementation of all the remaining stages of the transition programme, including the elections;

(c) Designate a review committee, under the chairmanship of a judge of the Superior Court, to examine the decrees promulgated by the military Government to date to identify and recommend the repeal of those decrees or provisions that encroach on the human rights provisions of the Constitution or otherwise hinder the supremacy of the rule of law;

(d) Ensure that the executive branches of Government and, in particular, the various state and armed forces security agencies respect and promptly carry out the decisions, orders and judgements of the courts;

(e) Release all persons detained under Decree No. 2 of 1984, and similar decrees, and grant amnesty to persons who have been convicted for political offences;

(f) Lift the existing restrictions in law, in fact and in practice and refrain from imposing other restrictions on political and professional associations and labour unions, in accordance with the national and international norms on freedom of association;

(g) Remove restrictions on the right of freedom of expression of the press, release journalists and refrain from harassing the media;

(h) Give wide publicity to and make available copies of the 1995 draft constitution.

F. Situation of minorities

97. As stated earlier, the population of Nigeria is composed of some 400 ethnic, religious or linguistic groupings. Violations of the rights of the Ogoni population have obtained much publicity, in particular since October 1990, when the Movement for the Survival of the Ogoni People was established. A bill of rights for the Ogoni was declared soon after, demanding, inter alia, autonomy

for the Ogoni. Information received from different sources indicates that following a series of protests in early 1993 against the military Government and the Shell Petroleum Development Company, activists of the Movement for the Survival of the Ogoni People were repeatedly arrested and detained. As protests continued, mounting disagreement regarding the structure of the Movement and its strategy reportedly created a rift in the organization's leadership.

98. According to government reports, violence in Ogoniland that occurred prior to May 1994 was the result of ethnic clashes between the Ogoni and neighbouring ethnic groups. However, it has been alleged that the Government played an active role in fomenting ethnic antagonism. Further, plain-clothes army troops were reported to have participated in secret military raids.

99. Following the murder of four prominent Ogoni leaders during a riot in Giokoo in 1994, the Rivers State internal security task force, a military unit created in January 1994, was reinforced and conducted a series of raids on Ogoni villages. The Special Rapporteur on extrajudicial, summary or arbitrary executions transmitted several cases to the Government of Nigeria in previous years containing allegations of extrajudicial executions carried out by the Nigerian security forces and in particular by the special task force. Hundreds of Ogoni are reported to have been arrested or detained in May and June 1994 by the Rivers State internal task force and are alleged to have been kept in appalling conditions.

100. Reports indicate that restrictions on freedom of association, expression and assembly are not confined to members of the Ogoni community. Other communities are reported also to have received warnings of the dangers of protesting against government policies, and leaders have reportedly been threatened that if they did not obey the Government they would be locked up.

101. Information received shortly before the present report was finalized contains allegations of clashes between security forces and members of a religious minority which allegedly resulted in the massacres, in two separate incidents, of 14 and 50 members of the Shiite minority in Kaduna State by members of security and police forces, respectively. The two Special Rapporteurs wish to take up this issue in greater detail during their visit to Nigeria.

Recommendations of the fact-finding mission of the Secretary-General

102. The fact-finding mission of the Secretary-General recommended, inter alia, that the constitution of a committee comprised of representatives of the Ogoni community and other minority groups in the region be chaired by a retired judge of the High Court so as to introduce improvements in the socio-economic conditions of those communities, enhance employment opportunities and health, education and welfare services and act as ombudsman in any complaints/ allegations of harassment at the hands of the authorities. The committee may make recommendations for the Government to carry out.

V. PRELIMINARY CONCLUSIONS AND RECOMMENDATIONS

103. The Special Rapporteurs consider the following conclusions and recommendations to be preliminary in nature, pending the findings of their mission to Nigeria.

Conclusions

(1) The Special Rapporteur on extrajudicial, summary or arbitrary executions remains deeply concerned about the application of the death penalty in Nigeria; the use of force by law enforcement officials; the continuing occurrence of communal violence and apparent lack of preventive measures; and extrajudicial, summary or arbitrary executions, the large number of deaths in detention and the high rate of impunity;

(2) The Special Rapporteur on the independence of judges and lawyers expresses grave concern that in Nigeria today substantial judicial power, particularly in the administration of criminal justice, is vested in the military and special ad hoc tribunals to the exclusion of the ordinary courts. Such tribunals cannot possibly be independent and impartial, let alone be seen to be so. Further, these tribunals do not appear to apply the universally accepted principles of due process in the administration of justice. With appeals to, and the supervisory powers of, the ordinary courts so severely restricted, these tribunals now appear to exercise unbridled judicial power in the administration of criminal justice. Thus, the rule of law in Nigeria appears seriously in jeopardy.

Preliminary recommendations

(1) The two Special Rapporteurs appeal to the Government of Nigeria to fully implement the recommendations made by the fact-finding mission of the Secretary-General following its visit in April 1996, as well as the recommendations made by the Human Rights Committee following the examination of the initial report of Nigeria under article 40 of the International Covenant on Civil and Political Rights. In particular, all persons detained under Decree No. 2 of 1984 and similar decrees should be immediately released or be brought to trial before the ordinary courts if there are any criminal charges against them. The Ogoni detained since mid-1994 pending trial must be brought to trial without further delay before the ordinary courts or else be released unconditionally. In the interim, their physical and medical needs must be attended to forthwith;

(2) The two Special Rapporteurs also urge the Government to take measures to prevent the occurrence of intercommunal violence. Allegations of killings as a result of intercommunal violence should be investigated immediately;

(3) The two Special Rapporteurs request the Government of Nigeria to undertake all necessary efforts to ensure that the mission of the Special Rapporteurs can be carried out without any hindrance; that they will have access to all authorities, individuals or groups of people with whom they wish to meet; that no reprisals or repressive measures will be taken against any persons who wish to contact or have contacted the two Special Rapporteurs or who have been

in contact with the fact-finding mission of the Secretary-General; that representatives of non-governmental organizations, churches and ethnic, religious or linguistic minorities will be allowed to travel without hindrance to the places where they would meet with the mission; that the two Special Rapporteurs will have access to all regions, towns, villages and buildings they wish to visit in order to carry out their mission; and that they will have access to all documentation or information they deem necessary for their respective mandates.

Notes

1/ General Assembly resolution 2200 A (XXI), annex, adopted on 16 December 1966.

2/ General Assembly resolution 217 A (III), adopted on 10 December 1948.

3/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G.